



**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**APPEAL DECISION SUMMARY**

**APPEAL No:** 2007-0478

**OUTCOME:** (check one)

SUSTAINED     REVERSED     REMANDED  
 INVALID/FULL  
 SUSTAINED and REMANDED  
 REVERSED and REMANDED  
 AGENCY ERROR/OTHER

**ISSUE ON APPEAL:**                      Discharge from nursing facility – non-payment

**GENERAL RULE OF LAW:**    Standards for discharge from nursing facility

1. Section 1919 of the Social Security Act and 42 CFR 483.12 sets forth the admission, transfer and discharge rights of individual residing in long term care facilities. Transfer and discharge requirements: The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:
  - (i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
  - (ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
  - (iii) The safety of individuals in the facility is endangered.
  - (iv) The health of individuals in the facility would otherwise be endangered;
  - (v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
  - (vi) The facility ceases to operate.

Social Security Act, Section 1919; Code of Federal Regulations, 42 CFR 483.12; Nursing Home Manual, Chapter VII, pp. 6-8.

2. Implementation of transfer and discharge policies.
  - A. To implement and conform with the provisions of subdivision A4 of §32.1.138, a facility may discharge the patient, transfer the patient, including transfer within the facility, only:

1. If appropriate to meet the patient's documented medical needs;
  2. If appropriate to safeguard that patient or one more other patients from physical or emotional injury; or
  3. On account of nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act and the Virginia State Plan for Medical Assistance Services...
- B. Except in an emergency involving the patient's health or well being, no patient shall be transferred or discharged without prior consultation with the patient, the patient's family or responsible party and the patient's attending physician. If the patient's attending physician is unavailable, the facility's medical director in conjunction with the nursing director, social worker or another health professional shall be consulted. In case of an involuntary transfer or discharge, the attending physician of the patient or the medical director of the facility shall make a written notation in the patient's record approving the transfer or discharge after consideration of the effects of the transfer or discharge, appropriate actions to minimize the effects of the transfer or discharge, and the care and kind of service the patient needs upon transfer or discharge. Code of Virginia §32.1-138.1.
- C. Except in an emergency involving the patient's health or well being, reasonable advance written notice shall be given in the following manner. In the case of a voluntary transfer or discharge, notice shall be reasonable under the circumstances. In the case of an involuntary transfer or discharge, reasonable advance written notice shall be given to the patient at least five days prior to the discharge or transfer.

Code of Virginia §32.1-138.1.

3. The nursing home must follow its normal collection procedures, which will consist of no fewer than three written statements. Nursing Home Manual, Chapter VII, (p. 21).

**AGENCY DECISION:** The hearing officer remanded the case to the nursing facility, based upon the following:

Appellant had an outstanding balance. After written request for payment and the balance was not satisfied, the Nursing Home sought to discharge the Appellant due to non-payment. The Appellant was notified in writing of the decision to discharge. However, the NF did not complete discharge planning as required.

**APPLICABLE CITATIONS FOR ACTION:**

**Applicable Law/Regulations/Policy**

**Social Security Act**

Title 1919

**Code of Federal Regulations**

42 CFR §483.12

**Code of Virginia**

§32.1-138.1

**Nursing Home Manual**

Chapter VII